IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12556 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

RAMAGAURI HARKISHANDAS

Appearance:

MR AJ DESAI ASST. GOVERNMENT PLEADER for Petitioner

MR HARIN P. RAVAL for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 18/03/97

ORAL JUDGEMENT

1. This petition has been filed by State of Gujarat, challenging the order made by the Urban Land Ceiling Tribunal, Ahmedabad on 16.3.1992 allowing the appeal of the respondent by which the determination of surplus vacant land situated in the Urban Agglomeration of Rajkot vide order dated 27.5.1986 was set aside. The State

Government also challenges the consequential final order made by the competent authority under the Urban Land Ceiling Act giving effect to the order of the Tribunal.

2. In brief, the facts which led to this petition may be noticed.

The Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as `the ULC Act') came into force with effect from 17.2.1976 and was made applicable to State of Gujarat since its inception. On 15.9.1976. Gokuldas Kalyanji filed a statement in respect of vacant land in Urban Agglomeration. Another statement in respect of the part of the very same land was filed by Prabhudas Gokuldas, son of Gokuldas Kalyanji also on 15.9.1976. The said Prabhudas claimed the land to be ancestral property of Hindu Undivided Family of which Gokuldas was Karta and he has interest in the land as coparcener by birth. It was also claimed that partition of the ancestral property also took place on 17.2.1995. Said Gokuldas died on 20.10.1977. On 5.10.1982, the competent authority published draft statement under Section 8(3) of the ULC Act. While publishing draft statement, the competent authority has clubbed together the statements filed by Gokuldas and Prabhudas. The properties in question were land comprised in Survey No. 170 and a constructed house. While the land covered by Survey No. 170 was situated in village Kotharia and was entered into as agricultural land in the revenue records, the house was situated at Raghuvirpara, Rajkot. The statement of Prabhudas included only half of Survey No. 170, Kotharia (village). After publishing of draft statement, objections were filed to the same. Objections inter alia included the land covered by Survey No.170 is an ancestral property of the Hindu Undivided Family and was held by Gokuldas as Karta of Hindu Undivided Family and members of the family have in their own right a share in the said property, and Gokuldas's family members including major daughters were entitled to be considered qua the said property as a separate unit. A part of the said land being adjacent to Railway line, within the prescribed distance from railway line is not constructible and the land to that extent cannot be considered to be a vacant land and that the land in question is an agricultural land, which is mainly used for agricultural purposes which does not fall within the definition of urban land and vacant land.

3. The competent officer rejected the plea of the objectors about the non applicability of the ULC Act. It held that land is agricultural land recorded in the name

of Gokuldas but referring to decision of the Government by which in the first instance the land was exempted in 1979 under Section 20(1)(a) of the Act which was withdrawn on 1.2.1984 and held that since exemption has been withdrawn, the land in question is to be taken into account for calculation of vacant land under the Act. The competent officer rejected the plea of the objectors as to the nature of property being ancestral and coparcenary property on the ground that land has been recorded in the name of Gokuldas alone and that Gokuldas has filed the return under the Act as an individual person. He also held that in the return filed by Gokuldas only other interested person in the land is stated to be Prabhudas and even in the return of Prabhudas no other name of the heirs of Gokuldas finds place, therefore no person other than Gokuldas and Prabhudas can be considered for entitlement to unit as holders of the land. As per his findings the competent officer declared 37,414.20 sqmts. as surplus vacant land in the case of the petitioners. In calculating the surplus vacant land, the competent officer found that the entire area held by Gokuldas measured 43,605 sqmts. to be considered for the purposes of the Act. He did not give any deduction for land situated appurtenant to railway line which under the Railways Act and Building Regulations could not be subjected to any construction to the extent provided under the Act and Rules as on the appointed day. According to learned counsel he has also not taken into account the land acquired for national highway prior to the appointed day which could not have been included in the holdings of the Gokuldas as the land has already been acquired and vested in the Government prior to appointed day.

In appeal before the Urban Land Ceiling Tribunal, manifold contentions were raised before the Tribunal as were raised before the competent authority. Particular note may be taken of objections about the properties in question being ancestral, right of daughters to share in the ancestral property entitling them to a separate unit, the nature of land being agriculture, which is not subject to ULC Act, wrongful consideration of land acquired prior to appointed day, for road widening and construction of national high way bye pass and over bridge, and non-consideration of the fact that as per the by laws of the Building Regulations and Railway Administration it was compulsory to keep 30 meters land open from railway track and that much land being not constructible cannot be calculated in the `holding' of the appellant, and that the built up property at Raghuvirpara could not have been included in the total

holding for the purposes of ULC Act. The petitioner in his appeal also gave the measurement of land held by the holder after deducting the land acquired for national high way, over bridge by pass and not non-builtable land due to construction of over bridge, showing that remainder of 22,516 sqmts. land can only be said to be held by Gokuldas's Hindu Undivided Family on the appointed day. From this land further deduction was claimed on the ground of it being unconstructible to the extent construction is prohibited as per the Building Regulations under Railway Administration Rules.

4. On consideration of evidence, the Tribunal came to conclusion that property was purchased from the HUF funds by deceased Gokuldas who had received funds from properties of his father Kalyanji, therefore, Gokuldas was holding such lands as Karta of HUF, so the property in question should be treated as ancestral one. The Tribunal also held that all the members of the family attaining majority should be granted separate units which included Gokuldas's widow, his son and five daughters. It also accepted the contention of the appellant's that as per the Rules, that the land upto 30 meters distance from the centre of the railway track is to be compulsorily kept open, the same is not buildable land, and accepting the calculation furnished by the petitioner, kept the land to the extent it was unconstructible under the Building Rules out of calculation of surplus vacant land for the purposes of ULC Act. It further came to the conclusion that there was no surplus land to be declared as excess and directed the competent officer to file the cases Nos. 3620 and 3621, after following due procedure. In pursuance thereof competent officer made an order on 12.10.1992, giving effect to the order of the Tribunal.

5. This petition has been filed thereafter on 26.7.1994.

6. Learned counsel for the respondent has raised a preliminary objection that petition being grossly delayed and effect to the order of the Tribunal has already been given way back in 1992, and as a result of the orders passed by the Tribunal, respondents have acted upon by creating certain other interests in the land, it would not be just and proper to entertain the petition at this stage. Considering the facts and circumstances of the present case, which concerns the given effect to the social welfare legislation in its proper perspective and particularly keeping in view the fact that the objector himself has filed appeal against the order of competent

authority after a great delay and the delay in filing the appeal was condoned by the Tribunal keeping in view the interest of justice and the rights of the parties likely to be affected by the order, I am not inclined to accept this preliminary objection.

7. Coming to the merits of the case, so far as the finding of the Tribunal that the property in question is ancestral property, it is based on appreciation of evidence by the Tribunal. The Tribunal found that land in question has been acquired by Gokuldas with the funds of Hindu Undivided Family. This is a finding of fact which ordinarily binds the courts and is not to be interfered with in exercise of jurisdiction under Article 226 by reappreciating the evidence as an appellate court. It cannot be doubted that as per the personal law applicable to the parties, the properties acquired by aid of Joint Hindu Family Funds becomes the property of Hindu Undivided Family and partakes the character of ancestral property in the hands of the acquirer. The fact that the land in the revenue records is shown to be in the name of only one person is not relevant factor inasmuch as under the Scheme of Hindu Law, all properties of Joint Family are ordinarily held by the Karta of the family. It is only the nature of acquisition which determines the nature of the property and not the name of the holder. As per the Hindu Law, property inherited from paternal ancestor, upto 4th degree in ascent, is ancestral property. Property allotted to a coparcener on partition of ancestral property, property thrown by a particular member of a joint family into common hotch potch and property acquired with the aid of joint family property or funds bears the same character and is to be held as joint property. The contention of the learned Counsel that since Gokuldas had declared the property in the form to be an individual the contention to the contrary could not have been accepted by the Tribunal cannot be accepted. The declaration in the form at best is an admission which could be explained while considering the objections to the property being property of HUF. The admission is a piece of evidence like any other piece of evidence which could be accepted or rejected. It is not a case that the Tribunal has not taken into consideration the evidence including the admission made by the deceased Gokuldas in his form before coming to the conclusion. Moreover, it has to be seek that in the present case, simultaneously, when the deceased Gokuldas, submitted statement under the Act, his son Prabhudas has also filed statement of land held by him on the basis of the same being received by him on partition, claiming it to be HUF property, on the very same day on which statement was

filed by Gokuldas, and the competent authority had jointly decided the two statements and by publishing one single draft statement in respect of the two statement. Therefore, it was incumbent upon the competent officer himself to have decided the question of property being ancestral or otherwise on the basis of evidence about the nature or source of acquisition of the property rather than leaving the matter by reference to declaration of Gokuldas alone.

8. This Court in Special Civil Application No. 12390 of 1994 decided on 12.7.1995, where in the like circumstances the State Government, challenged the finding of the property in question being ancestral on the basis of the holders not declaring the property to be ancestral property in the statement and invited interference in the said fining of the Tribunal, rejected the plea by holding :

> `No ground has been made out before me either, which could suggest that the finding of fact arrived at by the Tribunal suffers from such error apparent on the face of the record which would vitiate the findings of fact arrived at by the fact finding authorities, inviting interference by issue of a writ of certiorari.'

9. The finding as to the exclusion of the land acquired prior to appointed day, for various purposes by the State and the land to the extent cannot be subjected to construction under relevant regulations under the Railways Act and of the constructed property of Raghuvirpara has not been challenged, before this Court in this petition. Therefore, to that extent also it cannot be said there there is any error apparent on the face of record which requires interference.

10. It was urged by the learned counsel for the State that even assuming that the property is ancestral, the finding of the Tribunal that all the members of the family attaining majority should be granted units including daughters suffers from error apparent on the face of the record, inasmuch as, on a partition of ancestral property daughters are not entitled to any share as they are not coparceners nor they are amongst female members who were entitled to a share when notionally a partition could be deemed to have takes place between coparceners. Therefore, solely on the ground that the property is ancestral, daughters do not have any subsisting interest in land in question which

could entitle them to a separate unit vis-a-vis property of Hindu Undivided Family while considering the computation of vacant land and surplus vacant land held by Gokuldas. Mr. Harin Raval, learned counsel for the respondent contests the proposition.

11. Having carefully considered the contention, I am of the opinion that the order of the Tribunal to the extent it has granted separate units to the daughters solely on the finding of the property being ancestral is erroneous on the fact of it.

12. It is not in dispute that parties are Hindus and residents of Gujarat and are governed by Mitakshara School. Under Hindu Law, coparcenary and HUF connotes two different bodies and are not synonym of each other. A Hindu Undivided Family or a joint Hindu Family consists of all persons lineally descendant from common ancestor and includes their wives and unmarried daughters. A daughter ceases to be a member of her father's family, on marriage when she becomes member of her husband's family. In that sense, a married daughter is not a member of Hindu Undivided Family of his father. A Hindu Undivided Family is a wider connotation which includes males as well as females. It has nexus only with the constitution of family and by itself does not relate it to the holding of the property or rights in property. As against this, a Hindu coparcenary is a much narrower body than the joint family. Generally speaking it includes only those persons who acquire by birth an interest in the joint or coparcenary property. These persons are the sons, grandsons, and great grandsons of the holder of the joint property for the time being. In other words, the coparcenary consists of male members of three generations next to the holder of the property for the time being in unbroken male descent. A male descendant through a female descendent is not a member of coparcenary under Mitakshara School of Hindu Law.

13. In this connection reference may be made to Para 212 and 213 of the Mulla's Principles of Hindu Law, 16th Edition. As will be seen from the aforesaid that concept of coparcenary is directly related to the existence of joint family property or a coparcenary property. The one incidence of coparcenary property, is that coparcener is one who acquires an interest in the joint property by birth and that he is a male. No female is ever a coparcener, though she may be member of joint family. The other concept of coparcenary property is, except to the extent it has now been eroded by the provisions of Hindu Succession Act on opening of a succession after the

commencement of Hindu Succession Act, resulting from death of any of the coparcener his interest in the coparcenary does not pass on to his heirs by succession but devolves on the remaining members of the coparcenary by survivorship. The another incidence of coparcenary property is that it is liable to be partitioned. In the present case, we are concerned with the incidence of partition. The question that arise for consideration is that who are the persons entitled to a share on partition in case partition takes place actually or is to be considered notionally on a given date. As the property vests in the coparceners whether only coparceners are entitled to a share on such partition or all of the members of the joint Hindu Family constituting the larger body are entitled to a share or only some of them.

14. According to the principles of partition enunciated by Mulla in his treatise `Principles of Hindu Law', the only property that can be divided is a coparcenary property. Every coparcener is entitled to a share upon partition, whether minor or major. A son begotten at the time of partition but born after partition is also entitled to a share as if he was in existence at the time of partition, if no share is reserved for him at the time of partition. For enforcing this claim, he is entitled to get the partition reopened and share allotted to him. No female is a member of coparcenary, therefore, no female is entitled to claim partition as a coparcener. However, certain females in certain circumstances, are entitled to a share when partition, takes place amongst coparceners. The females who are entitled to a share on partition have been stated to be, (i) a wife is entitled to receive a share equal to that of a son when there is a partition between a father and his sons; (ii) likewise a widowed mother though cannot compel a partition so long as the sons remain joint, but if a partition takes place between her sons, she is entitled to a share equal to that of a son in the coparcenary property; (iii) a paternal grandmother (father's mother) also when a partition takes place between her grand sons, since her own son being dead. She is entitled to a share equal to that of a son's sons's. She is also entitled to a share when a partition takes place between her living son and sons of a deceased son, no female other than the three females referred to above in their status as wife, widowed mother or parental grandmother is entitled to a share on partition. Thus, daughter, sisters etc are not entitled to share on partition. That is the effect of joint reading of Para 315 and 318 of the aforesaid treatise. Similar view has been enunciated by Raghavachari in his book on Hindu Law.

These principles also find support from Mayne in his Hindu Law and Usage.

Provisions of Section 4 needs attention in this respect. Subsection (1) of Section 4 determines the ceiling limit of urban land in the case of any person depending upon vacant land situated in specified clause of urban agglomeration. Subsection (2) provides method of computing the lands held by any person in different urban agglomeration. Subsection (4), (5), (6) and (7) provides for various interests held by persons or transferred by persons to be taken into consideration in calculating the extent of vacant land held by such person. Subsection (7) deals with persons who are members of HUF and provides to what extent their interest in the lands held by HUF is to be taken into account in calculating the land held by such member of the HUF. Subsection (7) reads as under:

> "4(7) Where a person is a member of Hindu undivided family, so much of the vacant land and of any other land on which there is a building with a dwelling unit therein, as would have fallen to his share had the entire vacant land and such other land held by the Hindu undivided family been partitioned amongst its members at the commencement of this Act shall also be taken into account in calculating the extent of vacant land held by such person."

The aforesaid provision clearly gives an indication of a statutory scheme that in the case of a property held by HUF so much of the vacant land and any of other land on which there is a building with a dwelling unit therein which would have fallen to the share of the member concerned, had the entire vacant land and such other land referred to above held by HUF been partitioned amongst its members at the commencement of the Act, is to be considered in the case of member concerned. The same cannot be considered in the hands of Karta of HUF in totality. Obviously, it envisages a notional partition and determination of shares that could be allotted on the appointed day, on the day in which holding of vacant land and surplus land has to be calculated under the Act, to those members of the family who are entitled to share on that date. Therefore without determining the entitlement to the share on the partition, automatically the vacant land cannot be divided into physical number of adult members who could be legitimately considered to be constituting bigger body of Hindu Undivided Family. Moreover, it is to be seen

that subsection (7) only deals with a person who is a member of HUF as discussed above, Married daughter cannot be treated to be member of HUF of which their father is Karta, as such. On marriage she ceases to be member of her father's family and becomes member of her husband's family.

15. Therefore to the extent merely on the basis of the fact that the property in question was ancestral property, the conclusion that on a notional partition of the ancestral property the major married daughters will be entitled to a separate unit qua the property in question without further finding that on the appointed day, such females had acquired a right in the said ancestral property under any law for the time being in force, is patently erroneous. The major married daughters of Gokuldas could not have been granted separate unit, either as members of family of Gokuldas or as a person entitled to share on partition of ancestral property of Gokuldas, unless they had become entitled thereto as heirs of Gokuldas under Section 8 read with Section 6 of the Hindu Succession Act. To that extent the order of the Tribunal cannot be sustained, and deserves to be set aside.

16. The learned counsel for the respondent urged that even otherwise, from the material on record the finding of the Tribunal that there was no surplus vacant land to be declared is sustainable. He invited attention of the court to the definition of `urban land' under Section 2(o), `vacant land' under Section 2(q). According to the learned counsel, from the definition of `urban land' for the purposes of the Act, the land which is mainly used for the purposes of agriculture has been excluded. Attention was also invited to Explanation (B) and (C) to urge that land which has been entered in the revenue record before the appointed day as per the purposes of agricultural land is deemed to be mainly used for agricultural purposes, until the same is excluded from the purview of Explanation (B) to Section 2(o) by specifying in the master plan to be used for the purpose other than agriculture. Likewise, the land which is being used by the holder mainly for the purposes of agriculture does not fall within the definition of vacant land, which is situated in urban agglomeration. Section 6 of the Act cast obligation on any person holding vacant land in excess of ceiling limit at commencement of the Act to file a statement before the competent authority having jurisdiction within such period, as may be prescribed, of vacant lands which are to be taken into account under the Act. Explanation to Subsection (1) of

Section 6 gives meaning to expression `commencement of Act'. Clause (i) of Explanation provides that the date on which the Act comes into force in any State is to be taken to be commencement of the Act for that State. Clause (ii) of Explanation says that where land is not vacant land situated in a State in which this Act is brought in force under clause (1) but becomes vacant later by any reason whatsoever, the date on which such land becomes vacant land, in respect of declarations and determination of the ceiling area and surplus vacant land, `the commencement of the Act' means the date on which such land becomes vacant. On this premise it was urged that undisputedly, the property in question comprised in survey No. 170 at village Kotharia is an agricultural land and was not a vacant land; on 17.2.1976 when the Act had come into force and became applicable to State of Gujarat. However, he was candid enough to state that after the order was made by the competent authority on 27.5.1986, the master plan for the Rajkot Agglomeration was published on 12.8.1988 in which the Survey No. 170 was shown to be reserved for the purpose other than agriculture. On this premise he urges that at best it can be said that on the facts emerging from the record that the land in question became vacant land falling within the definition of urban land only on 12.8.1988; applying the provisions of Section 6 in respect of Survey No. 170 the date of commencement of the Act will have to be taken to be 12.8.1988. In other words, if the Act became applicable to the land in question on 12.8.1988, when undisputedly the last holder of the land Gokuldas had expired and inheritance has opened. Interest of Gokuldas in land came to be vested as on the date of the death of the deceased Gokuldas in all his heirs males and females heirs of class I of schedule. In view of the provisions of Section 6 read with Section 8, of Hindu Succession Act in the property of a Hindu male dying intestate his daughters too inherit. In the circumstances interest of Gokuldas in the land to the extent became property of daughters and other heirs cannot be considered to be land held by Gokuldas at `the commencement of the Act' as on 12.8.88 to be considered as one single unit.

17. Learned counsel for the State urges that these questions were not raised hitherto before and therefore respondent is not entitled to raise these issues in this petition, particularly, when he has not challenged the order of Tribunal on any ground whatsoever. He urges that to the extent the order has not been found sustainable the order may be quashed and the competent officer may be left to compute the vacant land under the

provisions of the Act as per the directions of the Tribunal so modified.

18. Having carefully considered the rival contentions, I am unable to accede to the request of the learned counsel for the State to hold that these issues have been raised for the first time and the respondent be precluded from urging those issues. It has been noticed above that from the very inception in their objections to the draft statement, plea has been raised that the land is agriculture, and is being mainly used for agricultural purposes. It has also been urged that in view of these facts, land does not fall to be dealt with under the Act. The competent officer had side tracked the issue by referring to exemption granted to the land in question under Section 20(1)(a) in 1979 which has been withdrawn in 1984, therefore, it cannot be held to be exempted. These questions about non applicability of ULC Act were raised before the Tribunal as well. But the Tribunal had not thought it fit to decide the issue about applicability of the Act presumably on the ground that on its finding that land is ancestral and is divisible amongst seven units, and the extent of land not liable to be included in vacant land because no construction could be raised thereon and because of construction existing on appointed day, no surplus vacant land remains to be so declared to be vested in the State Government. It is true that the question about applicability of the Act with effect from 12.8.1988 do not find mention anywhere in the orders of the competent authority or of the Tribunal. The reason is obvious until order was made by competent authority against applicant, modified master plan had not been published at all, so as to invite applicability of Explanation (C) to Section 2(o). But that is a question which necessarily arise if land is ultimately held to be not includible in urban land and vacant land being agriculture land used mainly for that purpose on 17.2.1976. Attention was also invited by learned counsel for the respondent in this connection to observations made in the award made in acquisition proceedings of the land prior to 1976, describing the situation at site somewhere in 1976 to show that crop of Bajra and Wheat was standing which supports the plea that the land was being mainly used for agricultural purposes.

19. As a principle of law, the contention of the learned counsel for the respondent appears to be well founded. That a land which is mainly used for the purposes of agriculture is neither included in the definition of `urban land' not in the definition of `vacant land' under Section 2(o) and 2 (q) respectively.

It is the condition precedent before a land could be considered to be used mainly for the purposes of agriculture that such a land is entered in the revenue and land records before the appointed day as per the purpose of agriculture. This condition also appears to be fulfilled on the finding of the competent authority and that of the Tribunal as well inasmuch as land has been described as Agricultural land throughout in the two orders. Proviso to Explanation (B) to Section 2(o) also leaves no room of doubt that land which is entered in revenue or land record for the purpose of agriculture is deemed to be mainly used for the purpose of agriculture except to the extent such land is occupied by a building which is not in the nature of farm house. This is so because of specific exclusion of land covered by building which is not a farming house from the land to be used mainly for the purpose of agriculture. However, that is only a rule of evidence raising rebuttable presumption in favour of holder of such land which on establishing to the contrary may be treated otherwise.

20. It is also acceptable that if land in question is accordingly used for the purposes of agriculture at the commencement of the Act, on which alone the holder of the land in excess of ceiling limit comes under an obligation to furnish the statement, then, no statement was required to be filed on 17.2.1976 treating it to be the date of commencement of the Act. In that event, the commencement of the Act for the purposes of calculating the extent of vacant land in urban agglomeration can be taken to be the date on which it becomes vacant land by any reason as per clause (ii) of Explanation to Section 6 of the Act, which according to learned counsel for the respondent is 12.8.1988. About date of publication of modified Master Plan there is no dispute. In that event the daughters of the deceased Gokuldas who died in 1977 had acquired vested right to a specific share in the interest of deceased Gokuldas which he had in his coparcenary property at the time of his death by resorting to a fiction as if notional partition has taken effect immediately before his death, and the same cannot be taken into account of other persons except with whom the interest of the married woman could be clubbed otherwise under the provisions of the Act. In that event, the interest in the land in question held by married daughters will have to be considered and calculated vis-a-vis the holdings of the family to which they belong.

21. However, before the computation of the vacant land, under the Act in respect of the land in question

can be undertaken on the basis of admitted position of the land being recorded as agricultural land in the revenue records and the claim of the respondent that it was mainly used for the purposes of agriculture by the holder of the land Gokuldas/Prabhudas on the commencement of the Act, a finding has to be reached that the agricultural land in question which is situated in the urban agglomeration of Rajkot was in fact mainly used for the purpose of agriculture, considering the evidence that may be adduced rebutting the presumption arising under proviso to Explanation (B) of Section 2(o). Though contention was raised by the respondents before the competent officer as well as before the Tribunal, both have not chosen to examine the evidence in this regard and reach any finding. This Court does not while exercising jurisdiction under Article 226 ordinarily take exercise of examining the evidence and reach its own conclusions as a competent officer. The issue must be decided by the competent officer having jurisdiction and duty to decide the same. Therefore, unless the question of fact whether the land which is agriculture land and was also mainly used for the purposes of agriculture on 17.2.1976 when the Act became applicable to Gujarat is decided, the question about actual date of appointed day and commencement of the Act in the case of the petitioner cannot be determined so as to decide the contention raised by the learned counsel for the respondent.

22. In view of the aforesaid discussion, this petition is partly allowed. The order of the Tribunal to the extent it directs that married daughters, namely, Lilavanti alias Varshaben Gokaldas, wife of Vinodrai; Jyotsnaben Gokaldas alia Jayagauri, wife of Jitendrabhai Anjaria; Jyotiben Gokaldas, wife of Madhukantbhai and Jaswanti Gokaldas, wife of Harkishandas are members of the family of Gokuldas and major are to be granted unit as on 17.2.1996 solely on the basis of the property being ancestral contained in para 2 of the directions suffers from the error apparent on the face of record and are set aside. The finding that the property in question was an ancestral property belonging to HUF of which Gokuldas was the Karta shall remain unaffected. So also, the finding about exclusion of the properties acquired by the State prior to the commencement of the Act in the State of Gujarat, namely, 17.2.1976 are not to be taken into account and the finding that as per Rules to the extent land adjacent to railway tract is compulsorily required to be kept open and not subject to any construction is not to be included in calculation of vacant land as per Section 2(q)(1) also remain unaffected. However, the extent of land on which construction of building is not

permissible under building Regulations in force in the area in which the land in dispute is situated depends upon existing rules as on the date of commencement of the Act for the purpose of present case, as discussed above, and shall have to be redetermined in accordance with the determination of the commencement of the Act for the purposes of the present land. As a result the consequential order passed by competent officer at Annexure C dated 12.10.1992 is also set aside. Since the final outcome of the proceedings commenced with the filing of the statements by Gokuldas, Prabhudas, and determination of units which are entitled to be reckoned for the purposes of determination of surplus vacant land and calculation of land held by each unit so entitled to separate unit in the present case depends upon the finding on the question of fact about the property being mainly used for the purpose of agriculture about which neither the competent officer nor the Tribunal has bestowed attention, it would only be appropriate that matter is left now for the competent officer to decide the remaining contentions after accepting the aforesaid findings to be final in accordance with law and after giving an opportunity of hearing and producing necessary evidence as the parties may like to place on record. The proceedings may be completed as far as possible within a period of four months. Rule made absolute as indicated above. There shall be no order as to costs.